

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOE MOORE, III,

Petitioner,

**9:02-CV-0999
(NAM)(GJD)**

v.

VICTOR T. HERBERT, Superintendent,

Respondent.

APPEARANCES:

OF COUNSEL:

JOE MOORE, III

Petitioner, *pro se*

HON. ELIOT SPITZER

New York State Attorney General

Counsel for the Respondent

PATRICK F. MacRAE, Esq.

NORMAN A. MORDUE, District Judge

ORDER

By Memorandum-Decision and Order filed December 30, 2005, the petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 was denied and dismissed. Dkt. No. 13. Petitioner has appealed that dismissal to the United States Court of Appeals for the Second Circuit. Dkt. No. 15.

Presently before the Court is petitioner's request for a certificate of appealability ("COA") and for leave to proceed with his appeal *in forma pauperis*. Dkt. Nos. 16 and 17.

Appeals to the Court of Appeals in habeas corpus proceedings are governed by 28 U.S.C. § 2253, which provides in relevant part that:

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.¹

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

After reviewing the file, and for the reasons set forth in the Court's prior Decision and Order, the Court finds that petitioner has failed to make the showing required for issuance of a COA. Therefore, the Court denies his request.

Turning to petitioner's request to proceed *in forma pauperis* during the appeal of his case, the Court finds that petitioner has demonstrated sufficient economic need and grants his application.

WHEREFORE, it is hereby

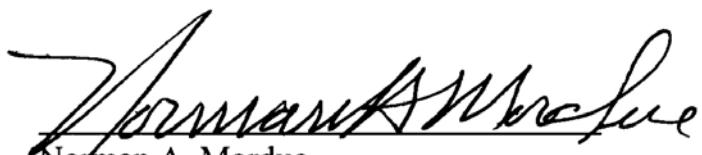
ORDERED, that petitioner's application to proceed with his appeal *in forma pauperis* (Dkt. No. 16) is **granted**, and it is further

ORDERED, that petitioner's application for a COA (Dkt. No. 17) is **denied**, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: February 6, 2006
Syracuse, New York



Norman A. Mordue
U.S. District Judge

¹ Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed.R.App.P. 22(b).